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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/578,437	05/25/2000	Jianhua Fan	12515.4USDI	6437

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Jianhua Fan
5800 Maudina Ave.
#C2
Nashville, TN 37209

EXAMINER

GELLNER, JEFFREY L

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 12/27/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

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Offic Action Summary	Application No.	Applicant(s)
	09/578,437	FAN, JIANHUA
	Examiner	Art Unit
	Jeffrey L. Gellner	3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 07 October 2002.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.
- 4) Claim(s) 1,25,27-29 and 44-48 is/are pending in the application.
 - 4a) Of the above claim(s) 25,28 and 46 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,27,29,44,45,47 and 48 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some *
 - c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) Interview Summary (PTO-413) Paper No(s) _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

Election

Claim 25 as amended in paper no. 21, entered 7 October 2002, is drawn to an unelected Species. In the newly amended Claim 25 the added language “so that the top” makes the claim drawn to Species III of paper no. 13. This Species was not elected by Applicant in paper no 14. Additionally, in the Specification on page 9, lines 12-14, the “notch (or notches) 40 [are] for venting air between the inside of the plate 22 and the outside of the plate 22”. Applicant has not disclosed the notches of Fig. 1 for support. Claims 25, 28, and 46 are withdrawn from examination because they are drawn to an unelected species.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 29, 45, 47 and 48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In Claim 1, line 5, the phrase “without hollow” is unclear in meaning. Perhaps the phrase should be --, the support not hollow--.

In Claim 45, line 1, the clause “wherein a wick being accompanied” is unclear in meaning.

In Claim 45, line 2, the language “one leg could not be filled with fluid sucking material” is unclear in meaning.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 29, 47 and 48 are rejected under 35 U.S.C. 102(b) as being anticipated by JP6-225651.

As to Claim 1, JP6-225651 discloses a tray (Figs. 1,2 and 7) for a pot comprising a plate (8 of Fig. 7) with side walls and a bottom wall (the bottom of element 8 of Fig. 1), the plate holding fluid (Fig. 1); and, at least one support (7 of Fig. 7) extending from the bottom wall (see Fig. 1), the support not hollow, the at least one support makes enough space for reserving fluid in the tray (see Fig. 1).

As to Claim 29, JP6-225651 further discloses a fluid intake lip (region of plate around leadline of element 8), wherein the intake lip is disposed on the sidewall of the plate (defining the “lip” as that part of sidewall above leadline of 8).

As to Claim 47, JP6-225651 further discloses a wick (41 of Figs. 5 and 1) providing a fluid conduit capable of sucking fluid from the plate.

As to Claim 48, JP6-225651 further discloses the wick inserted into a tube (1 of Fig. 5).

Claims 27 and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by JP7-147851.

As to Claim 27, JP7-147851 discloses a self watering tray (2 of Fig. 1) for a plant pot comprising a plate (1 of Fig. 1) with side walls, bottom, and fluid (10 of Fig. 1); and, at least one

leg (6 and 7 of Fig. 1) coupled to the plate with two section, an up section (defined as “up section” by Examiner in Fig. 1) and a low section (defined as “low section” by Examiner in Fig. 1) the up section smaller than the low section (defined as smaller in diameter), and a shoulder (defined as “shoulder” by Examiner in Fig. 1) between the up and low sections.

As to Claim 44, JP7-147851 further discloses a sucking material (9 of Fig. 2).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP7-147851.

As to Claim 45, the limitations of Claim 27 are disclosed as described above. Not disclosed is the the leg not filled with fluid suck material. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the tray of JP7-147851 by not including the wicking material so as to reduce the amount of material wicked by the leg so as to allow the soil to dry out to prevent root rot.

Response to Arguments

Applicant’s arguments are (1) JP6-225651 discloses a three part support and element 81 does not directly support the pot (Remarks page 2 5th para.); and, (2) JP7-147851 does not have a wicking support but rather different elements which are a wick and supports (Remarks page 7 2nd

complete para.). The arguments concerning Schmohl are moot because the claims are withdrawn because they are drawn to a nonelected species.

As to argument (1), Examiner considers element 7 of JP6-225651 to be the support. Element 81 is not the support. Element 7 of JP6-225651 may be recessed but Examiner does not consider it to be hollow.

As to argument (2), Examiner considers elements 6 and 7 of JP7-147851 to be one element - a support with wicking element.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shaw discloses in the art a tray with wick.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose telephone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The fax phone numbers for the Technology Center where this application or proceeding is assigned are 703.305.7687, 703.305.3597, and 703.306.4195.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.



Jeffrey L. Gellner



PETER M. POON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600